IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.350/2003

1. Conservator of Forests,
Govt. of Goa, Daman and Diu,
(Forest Department), with his
Office at Panaji, Goa.

2. Deputy Conservator of Forests,
South Goa Division, with his
Office at Margao, Goa. .... Petitioners.

Vs.

1. M/s. Shri Purnanand Farms,
a Partnership Firm, formed
under the Indian Partnership
Act, 1932, and duly registered
with their Office at Ponda,
Goa, represented by the Partner
Shri Anant Vaman Prabhu
Tendulkar, son of Vaman
Vishwanath R/o. Shiroda, Goa.

2. Shri Anantrai Kalidas Parekh,
son of Shri Kalidas Dhanji Parekh,
45 years old.

3. Nilesh Ramniklal Parekh, 33
years old.

4. Vinay Ramniklal Parekh,
31 years old, and

5. Praful Ramniklal Parekh,
27 years old,
all three sons of late Ramniklal
Kalidas Parekh, all four r/o.
Paresh Niwar, 34, Sarojini Road,
Bombay 400 056 and represented by
thrir attorney the said Shri Anant
Vaman Prabhu Tendulkar.

6. Union of India,
through :
a) The Administrator of Goa, Daman
& Diu, with his office at
Secretariat, Panaji, Goa.

b) The Secretary to the Government
of India, Ministry of Home Affairs,
New Delhi.

7. Jagannath Gopal Gaunkar,

alias Hari Prabhu Gaunkar,
residing at Canacona, Goa.

8. Mrs. Jagannath Gopal Gaunkar,
both Nos. 4 and 5 residing at
Canacona, Goa. .... Respondents.

Mr. A.N.S. Nadkarni, Advocate General with Mr. P.A. Kamat, Addl. Govt. Advocate for the petitioners.

Mr. J.P. Mulgaonkar, Advocate for respondents No.1 to 5.

CORAM : F.I. REBELLO, J.

DATE : JULY 25, 2003.

ORAL JUDGMENT :

Rule. Respondents waive service. Heard forthwith. By the present petition, the petitioners impugn the orders dated 24.2.2003 and 24.6.2003.

2. The petitioners, who are the defendants before the trial Court, in the course of leading evidence of their witnesses, sought to produce documents which were attached along with the affidavit filed on behalf of the defendants' witness No.5. This was rejected by the impugned order dated 24.2.2003 by the learned trial Court by holding that a proper application will have to be made for production of the documents at that stage.

Pursuant to that, the defendants applied under

Order 8, Rule 1-A, read with Rule 4 and Section 151 C.P.C and relying on Section 65 of the Evidence Act, prayed that they be permitted to produce all documents and lead secondary evidence. On hearing the parties, the learned Judge relying upon Clauses (e) and (f) of Section 65, held that a public document can be proved in the manner provided, that is, by producing the certified copy of a public document and no secondary evidence is permissible. The learned trial Court also held that the three documents sought to be produced are the documents within the meaning of Section 74 of the Evidence Act. It is, these orders, which are subject-matter of challenge.

3. All that Section 65 sets out is in what manner a document can be produced as evidence in the proceedings. It does not mean that in the event for some reasons, the said document itself is lost or destroyed in fire, or the public records are lost or destroyed that no secondary evidence can be permitted. The trial Court proceeded on the footing that the secondary evidence cannot be produced in respect of a public document, except by producing a certified copy.

On behalf of the Government, learned Advocate General has relied on the Judgment of the Apex Court in the case of Marwari Kumhar and others vs. Bhagwanpuri

Guru Ganeshpuri and another, A.I.R. 2000 SC 2629, wherein the Apex Court has held that secondary evidence can be led even of a public document, if the conditions as laid down under sub-Clause (c) are fulfilled. Out of the three documents, they have now certified copies of two, and in respect of one document, they only have a Xerox copy.

4. Considering the above, to my mind, the impugned orders will have to be set aside and the petitioners will have to be given opportunity to lead evidence, including of the Xerox copy, as secondary evidence, subject to its proof in the ordinary course. At the same time, rights of the respondents will have to be protected, considering that this evidence is sought to be led by the petitioners at the belated stage, by permitting the respondents, if they so advise, to lead further evidence in rebuttal of the evidence produced by the petitioners.

Rule accordingly. In the circumstances, there shall be no order as to costs.

F.I. REBELLO, J.

ssm.